

REMARKS

The Applicants have carefully reviewed the Final Office Action mailed February 4, 2008 (hereinafter “Final Office Action”) and offer the following remarks.

Claims 1-6, 9-14, 17-22, and 26-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0062290 A1 to *Ricci* (hereinafter “*Ricci*”) in view of U.S. Patent No. 5,819,092 to *Ferguson et al.* (hereinafter “*Ferguson*”). The Applicants respectfully traverse the rejection.

According to Chapter 2143.03 of the M.P.E.P., in order to “establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” The Applicants submit that neither *Ricci* nor *Ferguson*, either alone or in combination, discloses all the features recited in claims 1-6, 9-14, 17-22, and 26-29. More specifically, claim 1 recites a method for generating revenue in a peer-to-peer file delivery network comprising, among other features, “periodically sending the subscription-based content to each respective subscribing client node.” Claim 17 includes similar features. The Applicants submit that none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node. In maintaining the rejection, the Patent Office asserts that *Ricci* discloses this feature in paragraph [0040]. (See Final Office Action, page 6). The Applicants respectfully disagree. At most, the cited portion of *Ricci* discloses that during the transfer of digital media, a network acts like a peer-to-peer network without requiring a central server. (See *Ricci*, paragraph [0040]). However, no mention is made of periodically sending subscription-based content to a subscribing client node. Furthermore, the Applicants have reviewed the remainder of the reference and submit that nowhere does *Ricci* disclose this feature. Likewise, the Applicants have reviewed *Ferguson* and submit that *Ferguson* does not disclose periodically sending subscription-based content to a subscribing client node.

The Patent Office addresses this rejection by asserting that *Ricci* discloses subscription services. In particular, the Patent Office indicates that *Ricci* discloses collecting royalties without charging subscription fees and those royalties may be traditional charges, such as a subscription fee, as disclosed in paragraph [0030] of *Ricci*. (See Final Office Action, page 2). The Patent Office goes on to state that *Ricci* discloses that royalties are based on a number of uses where a quantity is equivalent to the number of uses, as disclosed in paragraph [0053] of *Ricci*. (See Final Office Action, page 2). Regarding the disclosure in paragraph [0030] of *Ricci*,

the Applicants respectfully disagree. The Applicants are not arguing that *Ricci* does not disclose subscription services. Instead, the Applicants are arguing that *Ricci* does not disclose periodically sending subscription-based content, which, as previously discussed, *Ricci* does not disclose.

Regarding the disclosure in paragraph [0053] of *Ricci*, the Applicants respectfully submit that the disclosure in this paragraph is not available as prior art against the present application. More specifically, the present application has a filing date of September 26, 2001, well before the filing date of *Ricci*, which is December 18, 2001. *Ricci* claims the benefit of provisional application no. 60/252,334 having a filing date of November 22, 2000. Nonetheless, the subject matter of paragraph [0053] is not disclosed in the provisional application. Therefore, this subject matter is not available as prior art against the present application.

In addressing the argument that none of the references disclose the feature of periodically sending subscription-based content to a subscribing client node, the Patent Office also asserts that *Ferguson* discloses this feature in col. 9, ll. 2-9. (See Final Office Action, page 2). The Applicants respectfully disagree. While the cited portion of *Ferguson* does disclose an online service, which may charge or pay a user of a content provider, nowhere does the cited portion disclose periodically sending subscription-based content to a subscribing client node. (See *Ferguson*, col. 9, ll. 4-5). Thus, the Applicants submit that claims 1 and 17 are patentable over the cited references. Similarly, claims 2, 4-6, 18, and 20-22, which ultimately depend from claim 1 or 17, are patentable for at least the same reasons along with the novel features recited therein.

Claim 9 recites a system for generating revenue in a peer-to-peer file delivery network comprising, among other features, “means for enabling decentralized downloads of subscription-based content that client nodes of the multiple client nodes subscribe to in order to receive periodic updates.” Claim 27 includes similar features. The Applicants respectfully submit that none of the references, either alone or in combination, disclose a means for enabling downloads of subscription-based content in order to receive periodic updates. As detailed above, none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node. Therefore, it follows that neither reference, either alone or in combination, can disclose receiving periodic updates nor a means for enabling downloads of subscription-based content in order to receive periodic updates. As such, claims 9 and 27 are

patentable over the cited references. Similarly, claims 10 and 12-14, which ultimately depend from claim 9, are patentable for at least the same reasons along with the novel features recited therein.

Claim 26 recites a method for generating revenue in a peer-to-peer file delivery network, comprising, among other features, “periodically sending the subscription-based content to each respective subscribing client node.” As detailed above, none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node.

Moreover, claim 26 recites enabling clients to become affiliate servers and paying affiliate server owners “a percentage of the fee charged for serving files.” The Applicants submit that none of the cited references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. As correctly pointed out by the Patent Office, *Ricci* does not disclose this feature. (See Examiner’s Answer mailed October 30, 2007, page 6). Likewise, *Ferguson* does not disclose this feature. Nonetheless, the Patent Office supports the rejection by asserting that *Ferguson* discloses this feature in col. 15, ll. 7-11, col. 4, ll. 53-60, col. 14, ll. 30-31, and col. 9, ll. 2-9. (See Examiner’s Answer mailed October 30, 2007, pages 6 and 7). The Applicants respectfully disagree. At most, the cited portions of *Ferguson* disclose levying fees against third party content owners for executing a transaction and that a server may charge or pay a user or a content provider a fee. (See *Ferguson*, col. 4, ll. 58-60 and col. 9, ll. 2-5; see also Figure 2, step 240). However, nowhere do the cited portions, nor anywhere else in *Ferguson* for that matter, disclose paying an affiliate server owner a percentage of a fee charged for serving files.

The Patent Office addresses this argument by stating that in *Ferguson* the teaching of paying a content provider or user for a digital media transaction in combination with the disclosure in *Ricci* relating to peer-to-peer file sharing discloses the feature of paying affiliate server owners a percentage of a fee charged for serving a file. (See Final Office Action, page 6). Moreover, the Patent Office asserts that allowing other client nodes to download files from their system is a basic economical decision wherein a resource supplier is reimbursed for their resource. (See Final Office Action, page 6). The Applicants fails to recognize how combining the teaching of paying a content provider or a user for digital media transaction with the teaching of peer-to-peer file sharing discloses paying affiliate server owners a percentage of a fee charged

for serving a file. Even assuming, *arguendo*, that allowing other client nodes to download files from their system is a basic economical decision wherein a resource supplier is reimbursed for their resource, nowhere does either reference, either in the cited portion or anywhere else, disclose anything about percentages, much less paying affiliate server owners a percentage of a fee charged for serving a file. For this reason and the reasons noted above, claim 26 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 3, which depends from claim 1, recites enabling clients to become affiliate servers and paying affiliate server owners “a percentage of the fee charged for serving files.” Claim 11, which depends from claim 9, and claim 19, which depends from claim 17, include similar features. As detailed above, none of the cited references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. For this reason and the reasons noted above with reference to claims 1, 9, and 17, claims 3, 11, and 19 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 28 recites a system for generating revenue in a peer-to-peer file delivery network comprising, among other features, charging a fee based on a quantity of content served when a client downloads contents and then charging a second fee to providers of subscription-based content when subscription-based content is served to client nodes. The Applicants have reviewed both *Ricci* and *Ferguson* and submit that neither of the references, either alone or in combination, discloses charging a fee based on a quantity of content served when a client downloads content and then charging a second fee to providers of subscription-based content when subscription-based content is served to client nodes. Accordingly, claim 28 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 29 also recites that a client node may become an affiliate server such that an affiliate server owner “is paid a percentage of a fee charged for content delivery.” As mentioned above, none of the references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. For at least this reason, claim 29 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

In addition, claims 7, 8, 15, 16, and 23-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ricci* in view of *Ferguson* and further in view of the *Applicants’ Related Art*. The Applicants respectfully traverse the rejection. Regarding claims 7, 8, 15, 16, 23, and 24, as detailed above, claims 1, 9, and 17, the base claims from which claims 7, 8, 15, 16, 23, and 24

ultimately depend, are patentable over *Ricci* and *Ferguson*. Moreover, the *Applicants' Related Art* does not overcome the previously noted shortcomings of both *Ricci* and *Ferguson*.

Therefore, claims 7, 8, 15, 16, 23, and 24 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 25 recites a method for providing subscription-based decentralized file downloads to client nodes in a peer-to-peer public network comprising, among other features, "periodically delivering the particular content files to respective clients nodes that subscribed to the particular content files." As detailed above, neither *Ricci* nor *Ferguson*, either alone or in combination, discloses periodically delivering content files to clients that subscribed to particular client files. In addition, the *Applicants' Related Art* does not disclose this feature. Accordingly, claim 25 is patentable over the cited references.

Claims 1-27 were also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 and 17 of co-pending Application No. 08/814,319 in view of *Ferguson*. The Applicants will address these rejections when the Patent Office indicates that the claims in the present application include allowable subject matter. The Applicants reserve the right to file a terminal disclaimer, to distinguish the cited references, or to otherwise address the provisional obviousness-type double patenting rejection at a later time.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Applicants' representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By: 

Anthony J. Josephson
Registration No. 45,742
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

Date: April 3, 2008
Attorney Docket: 1104-032